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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 23rd September, 2022
 + **CS(OS) 306/2022 and I.A. 8401/2022**
RAM KRISHAN AND SONS CHARITABLE TRUST..... Plaintiff

Through: Mr. Vierat K. Anand, Ms. Srishty Kaul, Mr. Kumar Shashank, Mr. Rishab Singh, Ms. Shrishti Bajpai & Mr. Anant Singh, Advocates (M-9717713067)

versus

**CHAIRMAN SHAURYA EDUCATIONAL INSTITUTE SOCIETY
 AND ORS & ORS. Defendants**

Through: Mr. Darpan Wadhwa, Sr. Advocate with Mr. Aman Dhyant, Ms. Kanchan Semwal & Mr. Amer Vaid, Advocates (M-9650279943)
 Mr. M.A. Niyazi, Standing Counsel for CBSE (M-9810413706).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present is a suit for permanent and mandatory injunction, as also damages, in respect of the Plaintiff's trademark and logo 'Banyan Tree School'. The case of the Plaintiff is that the Defendants herein continue to use the name 'Banyan International School' for their school situated in Jammu & Kashmir, despite five years having lapsed since they gave an undertaking to the Court to not use the said mark.
3. This dispute traces back to arbitration proceedings instituted by the Plaintiff against their ex-franchisees - the Defendants, seeking dissolution of the franchise agreement and restraining the Defendants from using the



Plaintiff's mark. The award passed in the said proceedings dated 15th December, 2012, gave the following directions:

"1. Respondent, its employees, agents, distributors, franchisees, representatives and assigns are restrained from in any manner using/ advertising/offering admission to students by using the trade mark 'The Banyan Tree School' and the Banyan Tree School Logo or any other trade mark or name including 'The Banyan International School' similar to the claimant's trade mark either as a trademark or part of the trade mark, a trade name or corporate name or as part of a trade or corporate name, or in any other manner whatsoever so as to pass off its services as and for the services of the claimant and infringe the registered trade mark of the claimant.

2. Respondent is restrained from admitting students to the school by using the claimant's school name being "The Banyan Tree School" and/or "The Banyan Tree International School" and / or The Banyan Tree School logo in any other manner by showing any affiliation with the claimant, whatsoever.

3. Claimant is entitled to receive and respondent is liable to pay a sum of Rs.1,11,72,250/- (One Crore eleven Lac Seventy Two Thousand Two Hundred and Fifty), as adjudicated above along with interest thereon @15% per annum from the date of the award till its realization by claimant. "

4. The said award was assailed under Section 34 of the Arbitration and Conciliation Act, 1996, by the Defendants. Finally, vide order dated 23rd August, 2017 passed in **O.M.P. 38/2013** titled **Ram Krishan & Sons Charitable Trust v. Shaurya Education Trust** and **O.M.P. 238/2013** titled **Shaurya Education Trust v. Ram Krishan & Sons Charitable Trust**, it was clearly recorded by the Court that the Defendants had agreed to change the name of the school from 'Banyan International School' (earlier known as



‘Banyan Tree School’) to ‘Shaurya International School’. The state of J&K had also given its no objection certificate for the said name change. In this background, the Court had directed the Central Board of Secondary Education (hereinafter, CBSE) to take steps as per law within a week from the date of the said order. The relevant portion of the said order dated 23rd August, 2017, reads as under:

“Learned counsel for the State of J&K has today placed on record a copy of the 'No Objection Certificate' whereby the Directorate of Education has on 19.08.2017, consented to change of the name of the school being run by the respondent under the name of the school 'Banyan International School' to Shaurya International School'.

It may be noted that the parties have agreed that in terms of the award of the learned Arbitrator, in case the respondents complies with the direction nos. 1 and 2 of the award dated 15.12.2012, the petitioner will not press for the claim no. 3 relating to payment of dues/ damages.

Learned counsel for the respondent reiterates that in view of the fact that now, the State of J&K has given the 'No Objection Certificate', they would henceforth, subject to appropriate steps by CBSE, will not use the brand name 'Banyan International School' and will use the name 'Shaurya International School'.

I may note that this Court on 03.08.2015, had directed the CBSE to remain present in Court. The counsel for the CBSE appeared on 27.1.2015. The counsel thereafter did not chose to appear in Court. However, in the interest of justice, the respondent may inform the CBSE about the necessary consent/ 'No Objection Certificate' produced by the counsel for the State of J&K.

Accordingly, the CBSE will take steps as per law within a week from today.

Binding the parties to the aforesaid directions, both the petitions stand disposed of.

The Registry may scan a copy of the aforesaid 'No Objection Certificate' dated 19.08.2017 which has been



filed by the counsel for the State of J&K and place it on record._

A copy of this order be given dasti to learned counsel for the parties.”

5. The stand of the Plaintiff, in the present suit, is that the Defendants have not taken any steps to change the name and continues to use the name ‘Banyan International School’, despite almost five years having lapsed since the above mentioned order. Accordingly, on 30th May, 2022, this Court had requested Id. Counsel for CBSE to be present in Court, who submitted that he would take instructions in the matter.

6. On the next date of hearing being 29th July, 2022, CBSE had handed over certain documents to the Court which showed that the CBSE had written to the Defendant-School on 8th December, 2017, calling upon the School to place before it a copy of the resolution for change of name along with an affidavit. According to the CBSE, no response was received from the School to that request. It was only on 19th July, 2022, when the CBSE wrote to the School through Mr. Harinder Mahajan, the Chairperson of the Shaurya Education Society that runs the School. Notably, this was after the orders of this Court, that the process for change of name in fact commenced. On the said date of hearing being 29th July, 2022, a reference was also made to a letter dated 1st September, 2017 which the Society had claimed to have written to the CBSE. However, none of the said letters were produced before the Court. In this background, this Court had, on 29th July, 2022, observed as under:

“8. Having perused the copies of documents shown to the Court by the CBSE, it is clear that the Society had a duty and obligation to follow up with the CBSE and effect the change of name, in compliance of



the orders passed by this Court which it has clearly not done. The ld. Counsel for the CBSE has further informed the Court that the Society is continuing to apply for recognition of new courses even in 2018 and has also obtained a five year's extension of affiliation on 1st October, 2021. Thus, **the Society continues to correspond with the CBSE under the old name itself. In the opinion of the Court, this position is completely violative of the orders passed by this Court and it is not expected that a Society running educational institutions would conduct itself in such a manner.**

9. A perusal of the letter dated 1st September, 2017 also does not inspire confidence of the Court inasmuch as this letter does not have an acknowledgement of the CBSE. This is in stark contrast with the acknowledgement which the latest letter written by the Society dated 19th July, 2022 contains. Clearly, the Society is playing hide and seek with the Court and prima facie trying to cover up its conduct of non-compliance of the orders. Under these circumstances, the following directions are issued:

- i) The CBSE shall place on record a detailed affidavit as to the submissions made today along with the relevant documents. The CBSE, in its affidavit, shall also place on record the details of the number of students and courses for which the Defendants' school has been given recognition / affiliation by the CBSE and any other details which are available with it. For this purpose, the CBSE is permitted to send any of its officials to do an inspection / inquiry in the school. The school authorities shall cooperate with the CBSE.
- ii) The CBSE shall proceed with the change of name of Defendants' school as per the application and documents now filed by the Defendants on 19th July, 2022 and take a decision on the same within a period of one month. If any further documentation or formalities are required to be completed, the



Defendants shall extend cooperation;

iii) The Defendants shall also place on record an affidavit giving complete details of all the courses run by it since 2017 under the impugned name. The Defendants shall also disclose in the affidavit, the number of students admitted qua each course and the fee charged for the same annually;

iv) The WhoIs record relating to www.banyaninternationalschool.co.in be also placed on record by the Plaintiff within two weeks.

10. The Chairman- Mr. Harinder Mahajan who has sent the letter dated 19th July, 2022 to the CBSE, shall remain present in Court on the next date of hearing.

11. It is clarified that the processing of the change of name application by CBSE and any decision taken thereof, shall be subject to further orders of this Court and shall not be taken as condoning the conduct of the Society in any manner whatsoever.”

7. As per the above order dated 29th July, 2022, this Court directed CBSE to proceed with the name change of the Defendant-School, and to seek any requisite documents for the same expeditiously. It further directed the Defendant-School as also CBSE, to inspect and file affidavits disclosing the number of students enrolled in the School, fees paid, subjects offered, for the last five years that the School was in violation of the order.

8. Pursuant to the above directions, today, CBSE has filed an affidavit dated 21st September, 2022, giving the details of the steps taken towards change of the Defendant-School's name from 'BANYAN INTERNATIONAL SCHOOL' to 'SHAURYA INTERNATIONAL SCHOOL'. As per CBSE's affidavit, the requisite fee for change of name, the forms, etc. have all been filed by the School now. The affidavit of the



CBSE on this aspect reads as under:

“ REGARDING CHANGE OF NAME

I. CBSE vide letter No. CBSE/AFF/730058/legal/2017/1331413 dated: 08.12.2017 had called upon the defendant school to submit before it a copy of resolution passed by the school for change of name along with an affidavit in compliance of order dated 23.08.2017 passed by Hon'ble High Court with regards to change of school name from 'Banyan International School' to 'Shaurya International School'. Copy of the letter dated 08.12.2017 is annexed hereto as **ANNEXURE-A**.

II. That as per the records available with CBSE no response or communication was received by CBSE from the defendant school in this regards till July 2022.

III. That the CBSE vide email dated 19.07.2022 wrote to defendant school by giving reference to telephonic conversation held on 18.07.2022 to submit all the documents required for the compliance of order dated 23.08.2017. A copy the email dated 19.07.2022 is annexed hereto as **ANNEXURE-B**

IV. That the defendant school passed a resolution for change of name only on 18.07.2022 and they sent to CBSE a copy of resolution along affidavit on 19.07.2022 which was received by the CBSE on 25.07.2022. copies of resolution dated 18.07.2022 along with affidavit are annexed hereto as **ANNEXURE-C (colly)**. There has not been any follow- up by the defendant school in this regard.

V. That the CBSE vide email dated 17.09.2022 requested defendant school to remit the prescribed fees Rs. 1,87,500/-in Board's Account towards change of School name. Copy Email dated 17.09.2022 is annexed hereto as **ANNEXURE-D**. Entire information formalities regarding change of name are available on CBSE website which is in public domain. The fee has been received on 19/9/2022 and the process is to be completed soon.”



9. Mr. Niyazi, Id. Standing Counsel appearing for CBSE, submits that now that the formalities have been completed, within the next two to three days, the change of name shall be approved by the CBSE.

10. On behalf of the school- Mr. Darpan Wadhwa, Id. Senior Counsel appears. Mr. Harinder Mahajan is also present in Court pursuant to the previous directions. Mr. Wadhwa, Id. Sr. Counsel, submits that with effect from 1st October, 2022, the name of the Defendant-School shall be changed to 'SHAURYA INTERNATIONAL SCHOOL' without any delay whatsoever. The implementation of this order shall be made on display boards, stationery, books, buses and in all the other places where the name 'BANYAN INTERNATIONAL SCHOOL' is used.

11. Insofar as the affidavit which was directed to be filed by the Defendant as per paragraph 9(iii) of the previous order is concerned, the Chairperson of the society has placed on record an affidavit, as per which, the total fee collected by the Defendant's school for the years 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 is as under:

Financial Year	Annual Course Fee New Admission (in Rs.)
2017-18	1,48,33,341
2018-19	1,65,71,823
2019-20	1,31,54,818
2020-21	69,33,161
2021-22	1,15,19,229
Total	6,30,12,372



12. Further details relating to the details of students along with the subject codes opted for and the various affiliations/ extensions granted to the School have also been placed on record.

13. The statement of Mr. Harinder Mahajan- who is present in Court- has also been recorded today which shows that the Defendant-School had complete knowledge of the order dated 23rd August, 2017. He admits that the school did not follow up with CBSE for the change of name and has given certain reasons for the same in his statement. He apologises for this error.

14. Heard. The award dated 15th December, 2012, was clear to the effect that the Defendants could not use the impugned name after the termination of the franchisee agreement. In addition, the Id. Arbitrator awarded a monetary compensation of Rs. 1,11,72,250/- in favour of the Plaintiff, as is evident from the above award. Moreover, this Court also takes note that the order dated 23rd August, 2017 records that the damages awarded by the Id. Arbitrator had not been pressed by the Plaintiff, only on the ground that the Defendant-School would change its name immediately. Clearly, this has not happened and more than five years have passed since the change of name was to be given effect to. There was continuous violation by the Defendants of the order passed by this Court on 23rd August, 2017.

15. Today, it stands admitted by the Defendant-School that it has continued to use the name which was prohibited and failed to change it till date. In fact, communications have been placed on record showing that the Defendant-School sought extensions from CBSE for their affiliation as recently as 2020, in the same impugned name. While the follow up for affiliation was sought with promptness, the same alacrity has not been



demonstrated for the change of name. The complete non-compliance over a period of five years cannot be brushed aside as merely an error.

16. Considering these facts, it was put to the Defendants as to whether the Defendants would be willing to compensate the Plaintiff in any manner, considering that during the continued violation of the previous order dated 23rd August, 2017, between 2017-22, approximately Rs.6,30,12,372/- has been collected by the Defendant-School in terms of annual course fees. The award also gave a substantial monetary compensation to the Plaintiff. The amount awarded of Rs. 1,11,72,250/- along with reasonable rate of interest would also be substantial as five years have elapsed.

17. Mr. Darpan Wadhwa, Id. Senior Counsel, has accordingly sought instructions from Mr. Mahajan, the Chairperson who is present in Court today, and agrees to pay a sum of Rs.50 lakhs as one time compensation to the Plaintiff and Rs.5 lakhs as costs towards legal aid. This proposal is acceptable to the Plaintiff, from whom Id. Counsel for the Plaintiff, has taken instructions.

18. In view of the above facts and submissions, as also considering that the matter involves educational institutions, this Court deems it appropriate to dispose of the matter as amicably resolved on the following terms and conditions:

- i) The Defendants shall stand restrained from using the mark 'BANYAN SCHOOL', 'BANYAN' logo, 'BANYAN INTERNATIONAL SCHOOL' or any other mark or name identical or similar to the Plaintiff's mark and names for its school or any other educational services or any other cognate and allied services.
- ii) The Defendants shall change the name of the Defendant-School



from 'BANYAN INTERNATIONAL SCHOOL' to 'SHAURYA INTERNATIONAL SCHOOL' without fail, with effect from 15th October, 2022. The said change shall be effected in all places where the earlier name 'BANYAN INTERNATIONAL SCHOOL' was being used, including brochures, books, display boards, buses and stationery. It is made clear that with effect from this academic year i.e., 2022-23 itself, the name of the School shall be known as 'SHAURYA INTERNATIONAL SCHOOL' and students who pass out in 2023 shall be issued certificates in the new name of the said School;

iii) The Defendants shall pay a sum of Rs.50 lakhs as monetary compensation towards the full and final settlement of the disputes raised in this suit, including the monetary compensation which was given in the award dated 15th December, 2012, and towards the non-compliance for the last five years. The said amount shall be paid in the following manner:

Instalment	Amount Payable (in Rs.)	Deadline for Payment	Payee
First	15 lakhs	28th October, 2022	Plaintiff
Second	10 lakhs	30th November, 2022	Plaintiff
Third	10 lakhs	31st December, 2022	Plaintiff
Fifth	15 lakhs	31st January, 2023	Plaintiff

iv) Additionally, an amount of Rs.5 lakhs shall be deposited with



the Delhi High Court Legal Service Committee by 31st December, 2022 by the Defendants.

v) Subject to the above payments being made, the Plaintiff agrees not to press for any other relief in the present suit, as also in its contempt petition being **CONT. CAS.(C) 322/2022** titled ***Ram Krishan and Sons Charitable Trust v. Mr. Sneh Gupta & Ors.*** against the Defendants. If there is any violation of the present order, the Plaintiff is free to avail of its remedies in accordance with law for the purpose of recovery monetary compensation in terms of the award, as also simple/punitive damages from the Defendant.

vi) CBSE shall approve the name change on or before 30th September, 2022.

19. The present suit stands decreed in the above terms. Decree sheet be drawn accordingly.

20. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 23, 2022

Rahul/MS

(Corrected & released on 26th September, 2022)